

ORAL ARGUMENT SCHEDULED FOR DECEMBER 6, 2024

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF WEST VIRGINIA, <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	No. 24-1120
)	(and consolidated cases)
U.S. ENVIRONMENTAL)	
PROTECTION AGENCY, <i>et al.</i> ,)	
)	
Respondents.)	

PETITIONERS' ORAL ARGUMENT PROPOSAL

As the Court's October 21, 2024 letter requires, Petitioners submit this proposed format for oral argument. Although Petitioners consulted with Respondents, the parties were unable to agree. Petitioners thus submit this separate proposal.

Petitioners propose that oral argument comprise three phases, with each side (Intervenors included) having a total of 70 minutes, divided as follows:

<u>Issue</u>	<u>Party</u>	<u>Time Allotted</u>
<p>EPA’s selection and application of 90% carbon capture and storage as the “best system of emission reduction” for existing coal-fired and new natural-gas-fired facilities.</p> <p>(Addressed in Section I of both Petitioners’ and Respondents’ briefs.)</p>	<ul style="list-style-type: none"> • Scott Keller (counsel for Petitioner National Rural Electric Cooperative Association) • Respondents and Respondent-Intervenors (divided as they determine) • Rebuttal as reserved 	30 minutes each side
<p>EPA’s selection and application of 40% natural gas co-firing as the “best system of emissions reduction” for existing coal-fired facilities that commit to retire by 2039.</p> <p>(Addressed in Section II of both Petitioners’ and Respondents’ briefs.)</p>	<ul style="list-style-type: none"> • Allison Wood (counsel for Petitioner Electric Generators for a Sensible Transition) • Respondents and Respondent-Intervenors (divided as they determine) • Rebuttal as reserved 	20 minutes each side
<p>State discretion and sovereignty, and the implications of the major questions doctrine for the Rule as a whole.</p> <p>(Addressed in Sections III and IV of both Petitioners’ and Respondents’ briefs.)</p>	<ul style="list-style-type: none"> • Michael Williams (counsel for Petitioner State of West Virginia) • Respondents and Respondent-Intervenors (divided as they determine) • Rebuttal as reserved 	20 minutes each side

Petitioners and Respondents have agreed that the parties could rest on the papers for all remaining issues in the briefs.

Petitioners' proposal provides an orderly way to address issues of major national importance. No one can doubt the Rule's importance, as it will reshape our nation's energy grid while imposing billions in costs. It implicates several serious legal questions that have already spurred hundreds of pages of briefing. The Rule's issues deserve a full airing at argument.

Petitioners' proposal also tracks the Court's approach to handling oral argument on similar rulemaking efforts under the same Clean Air Act provision. The Court heard a challenge to the so-called Clean Power Plan en banc, leading to more than seven hours of argument. *See West Virginia v. EPA*, No. 15-1363 (and consolidated cases), ECF No. 1637882 (D.C. Cir. Sept. 27, 2016). A second oral argument on the Affordable Clean Energy Rule was nine hours long. *See Am. Lung Ass'n v. EPA*, No. 19-1140 (and consolidated cases), ECF No. 1865571 (D.C. Cir. Oct. 8, 2020). As Petitioners propose to do here, the Court grouped those arguments by subject matter.

In short, the Court has recognized before that these issues require careful—and sometimes extended—consideration. Petitioners’ modest proposal of a slightly more than two-hour argument would equip the Court to undertake that task.

Dated: Nov. 7, 2024

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